A.R.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Coram :- Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

Writ Petition No. 2621 of 2003

ROOP NARAYAN VERMA

Vs.

UNION OF INDIA & OTHERS

ORDER FOR CONSIDERATION

Sd/-
V.K.Shrivastava
Judge
16-01-2007

I agree.

Hon'ble Shri Dhirendra Mishra, J

Sd/-
DHIRENDRA MISHRA
Judge

POST FOR ORDER ON 18 JANUARY 2007

Sd/-
V.K. Shrivastava
Judge
17-01-2007

85

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Coram :- Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

Writ Petition No. 2621 of 2003

Petitioner : Roop Narayan Verma Son of Late Ghanshyam Verma, aged about 40 years, resident of Clubpara, Ward No.19 Police Station, Tehsil and District Mahasamund (CG)

Versus

Respondents :

1. Union of India through the Secretary Ministry of Law, New Delhi
2. State of chhattisgarh, through the Principle Secretary, DKS Bhavan, Raipur (CG)
3. Chitrarekha Verma, D/o Shri Neelkanth Verma, aged about 36 years, R/o Village - Boriakala, PS Abhanpur, PO Dumtarai, Tehsil And Distrtict Raipur

Present :- Shri BP Sharma, counsel for the petitioner.

Shri Bhishma Kinger, standing Counsel for respondent No.1 / Union of India

Shri Prashant Mishra, Additional Advocate General for respondent No.2/State.

Shri PP Sahu, counsel for respondent No.3.

ORDER
(passed on 18-.01.2007)

The following order of the Court was delivered by **Vijay Kumar Shrivastava, J :**

This is the petition under Article 226/227 of the Constitution of India, for the following reliefs :

(86)

1) A writ and /or an order in the nature of writ of mandamus do issue commanding and directing the respondent State authorities to produce all the relevant files, documents and records etc to show the steps taken by them for preventing the child marriages in the country and in the State of Chhattisgarh.

2) A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondents State authorities to effectively implement the provision of Child Marriage Restraint Act 1929 all over the area within their jurisdiction and for that prepare a scheme and establish agency for restraining the said marriages.

2-A : A writ and / or an order in the nature of writ of appropriate nature do issue declaring the Section 13(2) (iv) of the Hindu Marriage Act, 1955 is ultra vires to the Article 15 of the Constitution of India.

3) A writ and/or an order in the nature of writ of certiorari do issue quashing the impugned order dated 04-07-2003 (Annexure P-4) in the facts and circumstances of the case since the respondent State authorities have failed to discharge their duties for restraining the child marriages at the relevant time and which has given rise the dispute between the petitioner and respondent No.3 and therefore, pay to the respondent No.3 the amount of maintenance as ordered by the Court below.

87

2) Petitioner and respondent No.3 are Hindus by religion. When petitioner was about 7 years and respondent No.3 was about 4 years, they had been tied with wedlock on 21.04.1969 at village Boriakala, Tehsil and District Raipur. After a lapse of around 23 years from the date of marriage, respondent No.3 filed an application on 06.07.1992 against the petitioner claiming maintenance of Rs.1000/- per month, before the Court of Judicial Magistrate, 1st Class, Raipur under Section 125 of the Cr.P.C. (henceforth "the code"). Petitioner contested it on various ground *inter alia*, with the specific ground that the marriage was not solemnized in accordace with the mandatory provisions of Section 5 of the Hindu Marriage Act 1955 (henceforth " the Act 1955"), and it is against the provisions of Child Marriage Restraint Act 1929 (henceforth "the Act 1929"). Learned Magistrate, after enquiry and hearing to the parties, passed an order on 06.07.2002 and thereby directed the petitioner to make payment of amount of Rs.750/- per month to respondent No.3 towards her maintenance. Feeling aggrieved, petitioner preferred a Criminal Revision bearing No.315/2002. Learned 4th Additional Sessions Judge Raipur exercising revisional jurisdiction after hearing the parties, dismissed the revision vide order dated 04.07.2002.

3) Both those orders are the root cause for compelling the petitioner to institute this petition, who averred that so far criteria of age as prescribed under Section 5 of the Act 1955, petitioner and respondent No.3 were not within the age group; therefore, both of them did not acquire any legal enforceable obligation towards each other. The Act 1929 also prescribes age group; below that age group, there is a prohibition of marriage, petitioner and respondent No.3 were below the age group; therefore, their

88

marriage was also hit by the provisions of Act 1929. State authorities had an obligation to restrain the solemnization of child marriage and to give effect to the provisions of Act 1929, but, they utterly failed to discharge their duties; had the State Authorities took effective steps for prohibition of Child marriage, petitioner would have been saved from marrying respondent No.3. Even latches on the part of State authorities allowed so many couples to live even after a marriage tie that is in contravention of the Act 1929. In accordance with the provisions in Section 13 (2) (iv) of the Act 1955, wife, who contracted the marriage under the age of 15 years has been permitted to repudiate her marriage whether consummated or not after attaining the age of 15 years, but husband has not been allowed such a right to repudiate the marriage. This discrimination on the ground of sex has been made between the petitioner and respondent No.3 and such discrimination is not permissible within the scope of Article 15 of the Constitution of India.

4) From the facts, stated above and the relief prayed for, its conspicuous, that in a single petition petitioner has claimed the reliefs firstly i.e. against his wife, secondly against the State authorities and thirdly against Law makers. For the first relief, petitioner has right to challenge the orders passed by the Judicial Magistrate 1st Class and the Additional Sessions Judge for which independent cause of action arose. Second relief is in the nature of public interest i.e. against State authorities for not performing obligations in appropriate manner for which time to time as and when State Authorities did not perform their duties in accordance with law cause of action arose and thirdly cause of action arose when Section 13 (2) (iv) of the Act 1955 came into existence. All the reliefs are distinct and for those reliefs, High Court is required to invoke its

(89)

distinct jurisdiction i.e. provided in accordance with Criminal law, Marriage law and Constitution. We are afraid to accept that such a jumbled reliefs could be sought by a single petition.

5) Learned counsel for the petitioner contended that while incorporating amendment in the Act 1955 by marriage law amendment Act and providing following amendments, discrimination has been caused, and that being the discrimination on the ground of sex, cannot be allowed to remain in the statute.

> "Section 13 (2) (iv) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground :-
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> (iv) that her; marriage (whether consummated or not) was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.
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> Explanation :- this clause applies whether the marriage was solemnized before or after the commencement of the Marriage laws (Amendment) Act, 1976 (68 of 1976)"

6) On the oppugnation, learned counsel for the opposite side contended that Article 15 (3) of the Constitution of India itself promotes to enact such a provision. Therefore, the amendment does not suffer from any vires.

Article 15 (3) of the Constitution of India reads as below –

> "(3) Nothing in this article shall prevent the State from making any special provision for women and children."

7) Hon'ble Apex Court in the matters of [1] **Pratap Singh Vs Union of India and others,** [2]**Toguru Sudhakar Reddy and another Vs The**

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1 AIR 1985 SCC 1695
2 AIR 1994 SC 544

90

Government of Andhra Pradesh and others & [3]**Government of Andhra Pradesh Vs PS Vijay Kumar and another** also approved State competence to make special provisions for women. In the instant case, for the benefit of women, special provisions have been enacted and those provisions squarely covered within the scope of Article 15 (3) of the Constitution of India. Therefore, the whole amendment is legal and not ultra vires.

8) Learned counsel for the petitioner contended that the Act 1929 prohibits marriage below the prescribed age, and when petitioner and respondent No.3 were married, at that time, the age group was 18 and 15. Petitioner was below 18 years and respondent No.3 was below 15 years. Had the State authorities prevented the marriage, the petitioner would not have been compelled now, to pay maintenance to respondent No.3, set apart, segment of the prohibited marriage would not have been faced consequences of child marriage. On the other hand, learned counsel for the State submits that the Act 1929 prescribes modes for injunction, taking cognizance of offence, making report punishment etc., and State authorities are bound to implement those provisions in accordance with law. State authorities willfully did not allow child marriages to be performed. Petitioner failed to demonstrate instances where, despite any person being approached the State authorities, they willfully dis-obeying the law denied redressal to him. No doubt, this is a social enactment and non-compliance of the same gives rise to a number of evils, therefore, if, for want of sufficient provisions in the enactment, State is unable to check the evil, State should ensure to come through it by appropriate legislation, or by making other legal devices.

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[3] AIR 1995 SCC 1648

91

9) Learned counsel for the petitioner further contended that he was married to respondent No.3 in violation of the Act 1955 and 1929; therefore, he can not be compelled to pay maintenance and it is the State who should maintain respondent No.3. On the other hand, it is contended by the State that till marriage is valid and requirements for providing maintenance as envisaged under Section 125 of the "Code" exists, petitioner is bound to pay maintenance and the State can not be directed to maintain petitioner's wife. Petitioner, who did not take care for so many years when asked to maintain his wife by legal order by legal forum, has approached this Court to escape it that too on those ground, which are not available to him for avoiding payment of maintenance to his own wife.

10) Learned counsel for the petitioner relying on judgment rendered in [4] **MS Grewal and Another Vs Deep Chand Sood And Others** contended that Courts have social obligation to respond the need of people, but, in the instant case by inaction of the State social reforms are disrupted. Therefore, Court must invoke its jurisdiction by stepping in Article 226 of the Constitution of India. On the other hand, it is contended that the said case law does not cover the present case. We have gone through it. We do not find any exigency involved in the instant case, so as to require this Court to step in under Article 226 of the Constitution for issuing any direction.

11) In the result, the petition being devoid of merit, it is liable to be dismissed, and is accordingly dismissed. No costs.

Sd/-
V.K.Shrivastava
Judge

Sd/-
DHIRENDRA MISHRA
Judge

padma

[4] (2001)8 SCC 151